

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 6. ECONOMIC SECURITY

#### CHAPTER 7. DEPARTMENT OF ECONOMIC SECURITY CHILD SUPPORT ENFORCEMENT

#### PREAMBLE

1. Sections Affected

Chapter 7  
Article 1  
R6-7-101  
Article 6  
R6-7-601  
R6-7-602  
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Article 7  
R6-7-701  
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R6-7-712  
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Article 8  
R6-7-801  
R6-7-802

Rulemaking Action

New Chapter  
New Article  
New Section  
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2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 41-1954(A)(3), 41-1954(A)(1)(c), 41-1003

Implementing statutes: A.R.S. § 46-408(E)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening 4 A.A.R. 3818, November 13, 1998.

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Annmarie Mena

Address: Department of Economic Security, Child Support Enforcement

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P. O. Box 40458, Site Code 776-A  
Phoenix, Arizona 85067

Telephone: (602) 274-7703

Fax: (602) 277-0517

or

Name: Paulina Vazquez-Morris

Address: Department of Economic Security  
1789 West Jefferson, Site Code 010A  
Phoenix, Arizona 85007

Telephone: (602) 542-1163

Fax: (602) 542-5339

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

On August 22, 1996, a new federal law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, became effective. This legislation made significant changes to the distribution and disbursement of child support in Title IV-D cases. This rule implements these distribution and disbursement changes. These changes took effect on October 1, 1997, and have been applied to payments with receipt dates of October 1, 1997, and later. This legislation requires states to start tracking temporarily assigned arrearages on October 1, 1997. In addition, the legislation provides for a 3-year phase-in period from October 1, 1997, to September 2000. Temporarily assigned arrearage payments to the family will be delayed until October 1, 2000. The rule also contains a process for a custodial person to request an administrative review of the disbursement of support.

**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, and analysis of the study and other supporting material:**

Not applicable.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**8. The preliminary summary of the economic, small business, and consumer impact:**

This rule does not have an impact on small business. Private persons who are former recipients of public assistance will receive payment of specific support arrearages before the State of Arizona will retain assigned arrearages to reimburse public assistance. The economic impact is due to federal requirements to disburse certain support arrearages to the family first. The Department of Economic Security will be able to retain support for reimbursement of public assistance after the family has received payment of those arrearages that are not assigned to the state.

The Department of Economic Security currently has approximately 280,000 IV-D child support cases in the state. The Department collected child support totaling \$159.7 million in state fiscal year 1998, which was distributed to families. This rule will benefit the families who have stopped receiving cash assistance because the families will receive support arrearages before the Department of Economic Security can retain support to reimburse cash assistance.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Annmarie Mena  
Address: P.O. Box 40458, Site Code 776-A  
Phoenix, Arizona 85067  
Telephone: (602) 274-7703  
Fax: (602) 277-0517

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Department has scheduled the following oral proceedings:

<b>Phoenix</b>	<b>District 1</b>
Date:	May 12, 1999
Time:	10 a.m. to Noon
Location:	ADOT Auditorium Arizona Department of Transportation 206 South 17th Avenue Phoenix, Arizona

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**Tucson**                      **District 2**  
Date:                      April 20, 1999  
Time:                      8 a.m. to 10 a.m.  
Location:                  DES Conference Room  
                                400 West Congress, #420  
                                Room 444  
                                Tucson, Arizona

**Flagstaff**                      **District 3**  
Date:                      May 3, 1999  
Time                      Noon to 2 p.m.  
Location:                  DES Conference Room  
                                397 Malpais Lane #9  
                                Flagstaff, Arizona

**Yuma**                      **District 4**  
Date:                      April 19, 1999  
Time:                      Noon to 2 p.m.  
Location:                  DES Conference Room  
                                350 West 16th Street, Suite 232  
                                Yuma, Arizona

**Casa Grande**                      **District 5**  
Date:                      April 21, 1999  
Time:                      Noon to 2 p.m.  
Location:                  DES Conference Room  
                                401 North Marshall Street  
                                Casa Grande, Arizona

**Bisbee**                      **District 6**  
Date:                      April 20, 1999  
Time:                      3 p.m. to 5 p.m.  
Location:                  209 Bisbee Road  
                                DES Local Office Conference Room  
                                Bisbee, Arizona

Persons with a disability who wish to participate in the oral proceeding may request accommodation, such as a sign language interpreter by contacting agency personnel named above. Requests should be made as early as possible to allow time to arrange the accommodation. This document is available in an alternative format by contacting Paulina Vazquez-Morris (602) 542-1163, at the address listed in #4 of this preamble; TDD Relay (800) 367-8939. Requests should be made as early as possible to allow time to arrange the accommodation.

Written comments on the rule will be accepted until the close of the record, which is May 12, 1999, at 5 P.M.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.
12. **Incorporations by reference and their location in the rules:**  
None.
13. **The full text of the rules follows:**

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TITLE 6. ECONOMIC SECURITY

CHAPTER 7. DEPARTMENT OF ECONOMIC SECURITY  
CHILD SUPPORT ENFORCEMENT

**ARTICLE 1. GENERAL PROVISIONS**

Section  
R6-7-101. Definitions

**ARTICLE 6. TITLE IV-D DISTRIBUTION OF SUPPORT**

R6-7-601. Title IV-D Distribution of Support  
R6-7-602. Multiple Federal Income Tax Refund Offset Submittals  
R6-7-603. Allocation of Arrearage And Past Support Payments in Title IV-D Cases  
R6-7-604. Application of Futures And Prepaid Support  
R6-7-605. Title IV-D Distribution of Support In Foster Care Cases

**ARTICLE 7. TITLE IV-D DISBURSEMENT OF SUPPORT**

R6-7-701. Title IV-D Disbursement Of Support  
R6-7-702. Disbursement in Never Assistance Cases  
R6-7-703. Disbursement in Current Assistance Cases  
R6-7-704. Effective October 1, 1997, Disbursement in Former Assistance Cases  
R6-7-705. Effective October 1, 2000, Disbursement in Former Assistance Cases  
R6-7-706. Effective October 1, 1997, Disbursement of Federal Income Tax Refund Offsets  
R6-7-707. Effective October 1, 2000, Disbursement of Federal Income Tax Refund Offsets  
R6-7-708. Disbursement to State In Current Assistance Cases When Physical Custodian Is Not The Obligee  
R6-7-709. Application of Past Support Judgments  
R6-7-710. Allocation of Interest  
R6-7-711. Unassignment of Arrearages  
R6-7-712. Multiple States' Assigned Arrearages  
R6-7-713. Interstate Collections in U.I.F.S.A. Cases

**ARTICLE 8. CUSTODIAL PERSON REQUEST FOR ADMINISTRATIVE REVIEW OF DISBURSEMENT OF SUPPORT**

R6-7-801. Custodial Person Request for Administrative Review of Disbursement of Support  
R6-7-802. Department Review

**ARTICLE 1. GENERAL PROVISIONS**

**R6-7-101. Definitions**

The following definitions shall apply in this Chapter:

1. "Aid To Families With Dependent Children" (AFDC) means assistance granted under Title IV-A of the Social Security Act as it existed before August 22, 1996.
2. "Arrearage" means the total unpaid support owed under 1 or more support orders.
3. "Assignment of rights" means the state's right to support of a child and spouse who receives or received cash assistance consistent with A.R.S. §§ 46-407 and 46-408.
4. "Assistance unit" includes everyone in the cash assistance household who would normally be included in the cash assistance grant.
5. "Business day" means a day on which state offices are open for regular hours.
6. "Cash assistance" means monies paid by the Arizona Department of Economic Security or other Title IV-A

entity as provided in Title IV-A of the Social Security Act, 42 U.S.C. 601 et seq. The program currently disbursing these monies is now known as Temporary Assistance For Needy Families (TANF) and was previously known as Aid To Families With Dependent Children (AFDC).

7. "Child Support Case Registry" means the statewide registry of all Title IV-D cases, and all other cases in which the support order was established, modified or registered in Arizona on or after October 1, 1998, pursuant to A.R.S. § 46-442.
8. "Clearinghouse" means the Support Payment Clearinghouse established as provided in A.R.S. § 46-441, which distributes and disburses support and related payments in Arizona.
9. "Conditionally assigned arrearages" are arrearages that do not exceed the total cumulative amount of unreimbursed cash assistance and were temporarily assigned to the state until a family ceased receiving cash assistance, effective October 1, 2000. These are arrearages which were temporarily assigned to the State and became conditionally assigned when the temporary assignment expired. These do not include unassigned arrearages.
10. "Current assistance case" means a Title IV-D case in which an assistance unit is currently receiving cash assistance.
11. "Current support" means the monthly amount ordered by a court or an administrative entity.
12. "Department" means the Arizona Department of Economic Security or a contract agent operating a child support enforcement program on behalf of the Department and includes the attorneys representing the Department in child support enforcement.
13. "Disbursement" means the payment of monies to an obligee or other appropriate recipient.
14. "Distribution" means application of support and related collections to 1 or more specific obligations or debts.
15. "F.A.A." means the Family Assistance Administration which is the Department's program responsible for administering the cash assistance program under Title IV-A of the Social Security Act.
16. "Federal income tax refund offset" means the intercept of Internal Revenue Service income tax refunds to pay support and spousal maintenance as provided in 26 U.S.C. 6402 and 42 U.S.C. 664.
17. "Fees" means amounts ordered by the court to be paid to the Department for the costs of genetic testing, service of process or other court-related costs.
18. "Former assistance case" means a case in which an assistance unit formerly received cash assistance and is no longer receiving cash assistance.
19. "Futures" means support and spousal maintenance that the Department receives, which when received exceeds the amount of current support owing in a Title IV-D case having no arrearages or other unpaid obligations as stated in 45 CFR 302.51(c), but does not include federal or state income tax refund offsets.
20. "Handling fee" means the annual handling fee prescribed in A.R.S. §§ 12-284 and 46-441 that is payable monthly to the Clearinghouse.

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21. "Income withholding order" means an order or other legal process directing an obligor's employer or payor to withhold support and other monies from the obligor's income.
22. "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under A.R.S. §§ 25-621 et seq., U.I.F.S.A., or a law or procedure substantially similar.
23. "Injured spouse claim" means a written notice from the non-obligated spouse that the tax return is based on a joint income tax return. This includes evidence supporting the proportionate share of each spouse's payment of tax pursuant to A.R.S. § 42-1122 and 42 U.S.C. 664.
24. "I R S Tax Reversal" means a rescission by the Internal Revenue Service of a federal income tax refund offset that was previously received by the Department.
25. "Issuing state" means a state in which a support order or judgment determining parentage was rendered under U.I.F.S.A. or a similar law.
26. "Lying-in expenses" means the actual costs of pregnancy and childbirth.
27. "Never assigned arrearages" means arrearages that accrue in a never assistance case, or arrearages that accrue in a former assistance case after an assistance unit's most recent period of cash assistance ends and were never subject to an assignment of rights.
28. "Never assistance case" means a Title IV-D case in which a family never received cash assistance, but could be receiving or have received medical assistance under Title XIX of the Social Security Act.
29. "Nonperiodic payment" means a non-recurring payment or one which is not made at regular intervals.
30. "Obligee" means the person or agency entitled to receive support or spousal maintenance as provided in A.R.S. § 25-500.
31. "Obligor" means a person obligated to pay support or spousal maintenance as provided in A.R.S. § 25-500.
32. "Order" means a legal directive issued by a judicial officer or administrative entity.
33. "Past support" means the amount of support ordered in a paternity case for the care and support of a child for the period before a child support order is established.
34. "Permanently assigned arrearage" means arrearages that do not exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit at the time the assistance unit leaves cash assistance and:
  - a. Are or were assigned under an assignment of rights prior to, or in effect on September 30, 1997; or
  - b. Accrued under an assignment of rights effective on or after October 1, 1997, while an assistance unit is receiving cash assistance.
35. "Physical custodian," means an individual, other than a parent in a current assistance case, whom F.A.A. or a court has determined has physical custody of a dependent child, and who receives cash assistance for the care of a dependent child who resides with the individual.
36. "Prepaid support" means payments for support and spousal maintenance which the obligor has designated as payments in advance for support or spousal maintenance for future months in cases other than current assistance cases. Payments designated as prepaid support will only qualify if the Department has entered into a signed agreement with the obligor and the Department determines that there is no alternative which would allow for prompt payment of support and spousal maintenance owed to an obligee in a future month.
37. "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under A.R.S. §§ 25-621 et seq., U.I.F.S.A., or a law substantially similar.
38. "Spousal maintenance" or "spousal support" means an award ordered under A.R.S. § 25-319 or a similar law of another state, for the support or maintenance of a spouse or former spouse.
39. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. State includes an Indian tribe and includes a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under A.R.S. §§ 25-621 et seq., U.I.F.S.A.
40. "Support" means the monthly administrative or court ordered child support, medical insurance coverage and uncovered medical costs for the child, arrearages, interest on arrearages, past support, interest on past support and reimbursement for expended cash assistance as defined in A.R.S. § 25-500. Support includes spousal maintenance or spousal support when included in the same order as child support.
41. "Temporarily assigned arrearages" means arrearages which do not exceed the total cumulative amount of unreimbursed assistance as of the date the assistance unit stops receiving cash assistance, that accrue before any period in which the assistance unit receives cash assistance that are assigned to the state after September 30, 1997. These are not permanently assigned and the temporary assignment expires on October 1, 2000, or when the assistance unit stops receiving cash assistance, whichever is later.
42. "Temporary Assistance For Needy Families" (TANF) means assistance granted under Title IV of the Social Security Act, 42 U.S.C. 603, as amended August 21, 1996.
43. "Title IV-A" means Title IV-A of the Social Security Act, 42 U.S.C. 601 et seq.
44. "Title IV-D" means Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq.
45. "Title IV-E" means Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq.
46. "Title XIX" means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.
47. "U.I.F.S.A." means the Uniform Interstate Family Support Act, A.R.S. §§ 25-621 et seq.
48. "Unassigned arrearages" means previously assigned arrearages that exceed the total cumulative amount of unreimbursed cash assistance at the time an assistance unit no longer receives cash assistance and includes both unassigned during assistance arrearages and unassigned pre-assistance arrearages.
49. "Unassigned during assistance arrearages" means all assigned arrearages that are effective October 1, 1997, exceed the total cumulative amount of unreimbursed cash assistance when an assistance unit no longer receives cash assistance and that accrued while the assistance unit was receiving cash assistance.
50. "Unassigned pre-assistance arrearages" means all previously assigned arrearages that effective October 1, 1997,

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exceed the total cumulative amount of unreimbursed cash assistance when an assistance unit no longer receives cash assistance and that accrued before the assistance unit was receiving cash assistance.

51. "Unreimbursed cash assistance" means the total cumulative amount of cash assistance for which the State of Arizona has not received reimbursement.

**ARTICLE 6. TITLE IV-D DISTRIBUTION OF SUPPORT**

**R6-7-601. Title IV-D Distribution of Support**

- A. The Department shall distribute monies collected in a Title IV-D case in accordance with state and federal law and the provisions of this article to:

1. Current child support;
2. Current spousal maintenance;
3. Current month's handling fee;
4. IRS tax reversals;
5. Child support arrearage and past support judgments and the corresponding interest;
6. Spousal maintenance arrearage judgments and the corresponding interest;
7. Lying-in judgments;
8. Interest on lying-in judgments;
9. Past medical support judgments;
10. Interest on past medical support judgments;
11. Child support arrearages not reduced to a written judgment;
12. Interest on child support arrearages not reduced to a written judgment;
13. Spousal maintenance arrearages not reduced to a written judgment;
14. Interest on spousal maintenance arrearages not reduced to a written judgment;
15. Handling fee arrearages;
16. Fees; and
17. Futures.

- B. Arrearage payments distributed in a Title IV-D case are applied 1st to the principal and then to the interest that accrued on the principal in the following order:

1. The oldest judgment (principal 1st, then interest on that judgment) to the newest judgment.
2. Arrearages not reduced to a written judgment.

- C. The amounts received as support from the obligor shall be credited as the required support obligation for the month in which they are received unless they are submitted from an employer. Payments submitted by an employer as the result of an income withholding order are considered collected in the month in which the income was withheld by the employer. The date of collection shall be the date on which the income was withheld.

- D. When the date of withholding is not reported by the employer, the date of the check shall become the date of collection.

- E. An order for support issued by a court or an administrative agency in the United States is to be paid in United States dollars. When a payment of an order is made in a foreign currency, credit shall be given for the United States equivalent of the foreign currency tendered. The United States equivalent shall be based on the conversion rate used by the state bank as of the day the payment is received.

- F. When foreign currency is received as payment on a United States support order and the equivalent value in United States dollars is less than the ordered amount, an arrearage shall accrue.

- G. When foreign currency is received as payment on a United States support order and the equivalent value in United States dollars is more than the ordered amount, the excess amount shall be distributed in accordance with R6-7-601(A).

**R6-7-602. Multiple Federal Income Tax Refund Offset Submittals**

- A. When the federal income tax refund offset does not satisfy the total arrearages for all cases submitted to the Office of Child Support Enforcement of the United States Department of Health and Human Services for payment owed by an obligor to multiple obligees, the Department shall make a proportionate allocation to each obligee whose case was submitted for federal income tax refund offset. The Department shall determine the proportionate share by dividing the amount of arrearages owed to each obligee by the total amount of the arrearages owed by the obligor and multiplying the resulting percentage by the amount of the federal income tax refund offset.

- B. The Department shall refund any excess monies to the obligor. No interest shall accrue on these refunds.

**R6-7-603. Allocation of Arrearage and Past Support Payments in Title IV-D Cases**

When an arrearage or past support payment is received other than by an income withholding order and does not satisfy the total arrearages owed by 1 obligor to multiple obligees in Title IV-D cases, the Department shall make a proportionate allocation to each obligee. The Department shall determine the percentage allocated to each obligee by dividing the amount that the obligor owes to each obligee by the total arrearages that the obligor owes to all obligees, and multiplying the resulting percentage by the arrearage and past support payment. The Department shall use these procedures in Title IV-D cases to apply all arrearage or past support payments received from sources other than federal income tax refund offsets or direct payments from the obligor, except for U.I.F.S.A. cases as provided in R6-7-713.

**R6-7-604. Application of Futures and Prepaid Support**

- A. The Department shall apply futures as provided in federal law.
- B. The Department shall release the prepaid monthly ordered obligation when due in each future month for distribution in accordance with R6-7-601 of this rule.
- C. No interest shall accrue on prepaid support.

**R6-7-605. Title IV-D Distribution of Support in Foster Care Cases**

All amounts collected on behalf of an Arizona Title IV-E case shall be distributed to the Department for reimbursement of Title IV-E expenditures, in accordance with federal law.

**ARTICLE 7. TITLE IV-D DISBURSEMENT OF SUPPORT**

**R6-7-701. Title IV-D Disbursement of Support**

- A. Disbursement Recipients. The Department shall disburse the support and related monies that the Department obtains in a Title IV-D case in accordance with state and federal law and the provisions of this section to 1 or more of the following recipients:

1. An obligee;
2. The child support enforcement agency for a state when the other agency submits a request for support establishment or enforcement services and is authorized to receive support under U.I.F.S.A.;
3. The federal government if a state is providing or has provided cash assistance to the assistance unit, or a member of the assistance unit;

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4. A state if that state is providing or has provided cash assistance to the assistance unit, not to exceed the total amount of unreimbursed cash assistance;
5. The obligor when a refund is appropriate;
6. A bankruptcy trustee;
7. A state or federal agency as authorized by law.

**B. Issuance and Return of Support And Related Monies.**

1. The Department shall issue payments due to an obligee at the last known address filed with the Child Support Case Registry or last known address filed with F.A.A.
2. The Department shall issue refunds due to an obligor at the last known address filed with the Child Support Case Registry.
3. If the payment to the obligee is returned to the Department because it was undeliverable, the Department shall make a reasonable effort to locate the obligee during the 90-day period authorized under A.R.S. § 46-441.
4. If the Department fails to locate the obligee by the end of the 90-day period, the Department shall contact the obligor, under state and federal law, to request oral or written approval that the funds be applied to arrearages as provided in R6-7-601.
5. If an obligee asks the Department to directly deposit support or spousal maintenance in a financial institution and the financial institution returns those support monies because the obligee's account is closed, the Department shall make a reasonable effort to locate the obligee for 90 days following notice that the account was closed or the bank will not accept the deposit. If the obligee is located, the Department shall send the monies to the obligee.
6. Neither the return of monies to an obligor due to an inability to locate the obligee, nor the application of monies to arrearages or other support related debts terminates an obligor's obligation to pay current support arrearages or other support related debts.

**C. Disbursement. The Department shall disburse monies obtained from income withholding orders and all other sources as follows:**

1. The Department shall disburse support that the Department receives for a current cash assistance case within 2 business days of the last day of the month in which the Clearinghouse receives the payment.
2. The Department shall disburse support for a former or never assistance case within 2 business days of receipt by the Clearinghouse unless the Clearinghouse is unable to disburse the support for 1 or more of the following reasons:
  - a. The Department does not have the obligee's current address;
  - b. The Department lacks sufficient information to identify the cases to which the Department or its agent shall apply the payment;
  - c. An action is pending before a court or an administrative agency to determine whether support or related debts are owed and the appropriate distribution or disbursement;
  - d. The payment is for futures that federal law requires the Department to hold for disbursement in a future month or for prepaid support;
  - e. A court order, administrative order, bankruptcy stay, or state or federal law requires a different disbursement method or time frame; or
  - f. Other circumstances exist that make a proper and timely disbursement of monies impossible through

no fault or lack of diligence on the part of the Department.

3. When a federal income tax refund offset is based on a joint federal income tax return, the Department shall retain the offset for 180 days after receipt, or until the Internal Revenue Service notifies the Department of the resolution of the injured spouse claim, whichever happens 1st. The Department shall distribute and disburse a federal income tax refund offset that is based on a joint tax return in accordance with R6-7-706 and R6-7-707. No interest shall accrue on these monies.
4. When the amount received is from a joint income tax return to the Arizona Department of Revenue, the Department shall retain the offset for 45 days after the notice of intercept of the state income tax refund. The Department shall distribute and disburse monies collected from the Arizona Department of Revenue based on a joint income tax return in accordance with this article. No interest shall accrue on these monies except as provided in A.R.S. § 42-1122.
5. The Department shall retain the state lottery prize for 30 days after the notice of offset as prescribed in A.R.S. § 5-525 to allow the person entitled to the lottery prize an opportunity to appeal. The Department shall distribute and disburse monies collected. No interest shall accrue on these monies.

**R6-7-702. Disbursement in Never Assistance Cases**

Except as provided in R6-7-706 and R6-7-707 for federal income tax refund offsets, the Department shall disburse support and related monies collected for an Arizona never assistance case to a recipient of services under Title IV-D, or Title XIX of the Social Security Act, as follows:

1. First, to satisfy the current support obligations for the month in which the Department receives the support assigned to the obligee;
2. Second, to satisfy the handling fee for the month in which the Department receives the support;
3. Third, to satisfy never assigned arrearages owed to an obligee;
4. Fourth, to fees; and
5. Fifth, to futures as provided in R6-7-604.

**R6-7-703. Disbursement in Current Assistance Cases**

Except as otherwise provided in R6-7-706 and R6-7-707 for federal income tax refund offsets, the Department shall disburse support and related monies collected for an Arizona Title IV-D current cash assistance case as follows:

1. First, to satisfy the current support obligations, for the month in which the Department receives the support assigned to the State of Arizona, up to the total cumulative amount of unreimbursed cash assistance;
2. Second, to satisfy the handling fee for the month in which the Department receives the support;
3. Third, to satisfy temporarily assigned arrearages owed to the State of Arizona that accrued before the most recent period of cash assistance, up to the total cumulative amount of unreimbursed cash assistance;
4. Fourth, to satisfy permanently assigned arrearages owed to the State of Arizona to reimburse cash assistance, up to the total cumulative amount of unreimbursed cash assistance;
5. Fifth, to pay unassigned arrearages to the obligee when all cash assistance has been reimbursed;
6. Sixth, to fees; and
7. Seventh, to futures as provided in R6-7-604.



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**R6-7-704. Effective October 1, 1997, Disbursement in Former Assistance Cases**

Effective October 1, 1997, through September 30, 2000, the Department shall disburse support and related monies collected other than by federal income tax refund offset for a former cash assistance case as follows:

1. First, to satisfy the current support obligations for the month in which the Department receives the support owed to the obligee;
2. Second, to satisfy the handling fee for the month in which the Department receives the support;
3. Third, to satisfy never assigned arrearages owed to the obligee that accrued after the most recent period of cash assistance ended;
4. Fourth, to satisfy temporarily assigned arrearages owed to the State of Arizona that accrued before the most recent period of cash assistance, up to the total cumulative amount of unreimbursed cash assistance;
5. Fifth, to satisfy permanently assigned arrearages owed to the State of Arizona to reimburse cash assistance, up to the total cumulative amount of unreimbursed cash assistance;
6. Sixth, to satisfy unassigned arrearages owed to the family in which the assigned amount exceeds the total cumulative amount of unreimbursed cash assistance;
7. Seventh, to fees; and
8. Eighth, to futures as provided in R6-7-604.

**R6-7-705. Effective October 1, 2000, Disbursement in Former Assistance Cases**

Effective October 1, 2000, the Department shall disburse support and related monies collected in a former cash assistance case, except monies collected through federal income tax refund offset, as provided in R6-7-706 and R6-7-707, as follows:

1. First, to satisfy the current support obligations for the month in which the Department receives the support owed to the obligee;
2. Second, to satisfy the handling fee for the month in which the Department receives the support;
3. Third, to satisfy never assigned arrearages owed to an obligee that accrued after the most recent period of cash assistance ended;
4. Fourth, to satisfy unassigned pre-assistance arrearages and conditionally assigned arrearages owed to the obligee;
5. Fifth, to satisfy permanently assigned arrearages owed to the State of Arizona to reimburse cash assistance, up to the total cumulative amount of unreimbursed cash assistance;
6. Sixth, to satisfy unassigned during assistance arrearages owed to the family in which the assigned amount exceeds the total cumulative amount of unreimbursed cash assistance;
7. Seventh, to fees; and
8. Eighth, to futures as provided in R6-7-604.

**R6-7-706. Effective October 1, 1997, Disbursement of Federal Income Tax Refund Offsets**

Effective October 1, 1997, through September 30, 2000, the Department shall disburse support collected through federal income tax refund offset in accordance with federal law, as provided below:

1. First, to temporarily assigned arrearages owed to the State of Arizona to reimburse cash assistance;
2. Second, to permanently assigned arrearages owed to the State of Arizona to reimburse cash assistance; and

3. Third, to arrearages not assigned to the State of Arizona and owed to the obligee.

**R6-7-707. Effective October 1, 2000, Disbursement of Federal Income Tax Refund Offsets**

**A.** Effective October 1, 2000, the Department shall disburse arrearages collected through federal income tax refund offset in accordance with federal law, as follows:

1. First, to temporarily or conditionally assigned arrearages owed to the State of Arizona to reimburse cash assistance;
2. Second, to permanently assigned arrearages owed to the State of Arizona to reimburse cash assistance; and
3. Third, to arrearages not assigned to the State of Arizona and owed to the obligee.

**B.** The state shall retain conditionally assigned arrearages collected through the federal income tax refund offset to reimburse the state and federal governments up to the total cumulative amount of unreimbursed cash assistance paid to the assistance unit. Conditionally assigned arrearages collected from any source other than federal income tax refund offset are paid to the family.

**R6-7-708. Disbursement to State in Current Assistance Cases When Physical Custodian Is Not the Oblige**

The Department shall disburse support collected in a current assistance case when the physical custodian is not the obligee in accordance with R6-7-703. Current support collected in excess of the total cumulative amount of unreimbursed cash assistance may not be disbursed to a physical custodian who is not the obligee.

**R6-7-709. Application of Past Support Judgments**

When a court or an administrative agency orders a past support judgment that covers a period in which the obligee was on cash assistance, that period of the judgment during which the obligee received cash assistance is assigned to the state and will be distributed in accordance with A.R.S. § 46-408 and disbursed in accordance with this article.

**R6-7-710. Allocation of Interest**

- A.** The Department shall retain interest that accrues on assigned arrearages up to the total cumulative amount of unreimbursed cash assistance.
- B.** When collected the Department shall disburse interest to the obligee that exceeds the total cumulative amount of unreimbursed cash assistance owed to the state.
- C.** For arrears which accrued interest prior to October 1, 1997, the Department shall allocate the amount of interest on permanently assigned, temporarily assigned, never assigned, and unassigned arrearages based on a proportionate share of the total amount of arrearages owed on a case initiated by the State of Arizona. The Department shall determine the percentage allocated to each arrearage type by dividing each arrearage type by the total arrearages, and multiplying the resulting percentages by the total amount of interest accrued.

**R6-7-711. Unassignment of Arrearages**

**A.** When a family stops receiving cash assistance, the Department shall compare unreimbursed cash assistance and assigned arrearages as of the last day of the month when the family leaves assistance. If the total amount of assigned arrearages and accrued interest exceeds the total cumulative amount of unreimbursed cash assistance, the Department shall unassign the excess amount as follows:

1. First, from the principal of those arrearages temporarily assigned;



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2. Second, from the corresponding interest owed on the temporarily assigned arrearages;
  3. Third, from the principal of those arrearages permanently assigned; and
  4. Fourth, from the corresponding interest owed on the permanently assigned arrearages.
- B.** Before the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the federal government did not require states to track periods of assignment. If the state cannot determine whether the unassigned arrearages were from a pre-assistance period or a during assistance period, the state shall treat those unassigned arrearages as unassigned pre-assistance arrearages.

**R6-7-712. Multiple States' Assigned Arrearages**

When multiple states have assigned arrearages, the Department shall disburse arrearage payments owed to the State of Arizona 1st. After these arrearages are paid, if arrearages are known to be owed to other states, the Department shall determine the proportionate share to be disbursed to each of the other states by dividing the total amount of assigned arrearages owed to each state by the total amount of the arrearage owed by the obligor to all other states and multiplying the resulting percentage by the amount of the arrearages collected.

**R6-7-713. Interstate Collections in U.I.F.S.A. Cases**

When Arizona is the responding state, the Department shall send payments received to the initiating or issuing state pursuant to U.I.F.S.A., except as stated in R6-7-712.

**ARTICLE 8. CUSTODIAL PERSON REQUEST FOR  
ADMINISTRATIVE REVIEW OF DISBURSEMENT OF  
SUPPORT**

**R6-7-801. Custodial Person Request For Administrative Review of Disbursement of Support**

- A.** Upon receipt of a call or letter from a custodial person contesting disbursement, the Department shall review the debts, court ordered amounts and payment disbursement with the custodial person.
- B.** If the Department cannot resolve the issue by telephone, the Department shall send the custodial person the forms to request an administrative review.
- C.** The request for an administrative review need not be on a Department form, but shall:

1. Be in writing and be signed by the requesting party;
  2. Include the residential and mailing address of the requesting party; and
  3. State the reasons why the requesting party disputes the disbursement.
- D.** If the written request does not contain all the information listed in subsection C, the Department shall return the form to the custodial person.
- E.** The custodial person shall include with the request any relevant information to assist the Department, including a copy of any orders issued, documentation of support payments made and any notice sent by the Department.
- F.** A request may be transmitted electronically.
- G.** The custodial person shall submit a written request for an administrative review within 15 business days after the date on which the support payment is mailed by the Clearinghouse or 15 days after the end of the month in which the support payment is received by the custodial parent.

**R6-7-802. Department Review**

- A.** The Department shall conduct administrative reviews of disbursements as provided in this section.
- B.** The Department shall send a notice of administrative review to the custodial person filing the request. The notice shall specify any additional information needed to complete the review. The requesting party shall provide any additional information within 10 business days from the date of the Department's request. If the Department does not receive the information within the 10 day time-frame, the Department shall issue a decision with the available information.
- C.** The Department shall issue a written final determination within 45 business days after sending the notice of administrative review, or if additional information is required, 45 business days after receipt of this information. If the Department does not receive the information within the 10 day time-frame, the Department shall issue a decision with the available information.
- D.** The Department shall issue a final determination to each custodial person and all interested parties in each case by certified mail.
- E.** The custodial person may file an action in Superior Court to appeal the final determination of the Department as provided in A.R.S. §§ 12-901 et seq.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 15. REVENUE**

**CHAPTER 2. DEPARTMENT OF REVENUE  
INCOME AND WITHHOLDING TAX SECTION**

**PREAMBLE**

**1. Sections Affected**

R15-2-342  
R15-2-347  
R15-2-534  
R15-2-702  
R15-2-704  
R15-2-705  
R15-2-821  
R15-2-822  
R15-2-823

**Rulemaking Action**

Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal

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R15-2-1022	Repeal
R15-2-1215	Repeal
R15-2-1217	Repeal

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 42-1005.

Implementing statutes: A.R.S. §§ 42-1104, 42-1108, 42-1111, 42-1125, 42-1251, 42-2061, 42-2062, 43-325, 43-341 through 43-346, 43-1022, 43-1215, 43-1217, and 43-1242.

**3. List of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 537, February 19, 1999.

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Jaimie Lee, Tax Analyst  
Address: Tax Research and Analysis Section  
Arizona Department of Revenue  
1600 West Monroe  
Phoenix, Arizona 85007  
Telephone: (602) 542-4672  
Fax: (602) 542-4680

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

Due to legislative changes, the above rules are either repetitive or contradict other rules or statutory provisions. Therefore, the department proposes to repeal these rules.

**6. Reference to any study that the agency proposes to rely on and its evaluation of or justification for proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**8. The preliminary summary of the economic, small business, and consumer impact:**

It is expected that the benefits of the rules will be greater than the costs. The repeal of these rules will benefit the public by eliminating obsolete rules which no longer serve their intended purpose. The department will incur the costs associated with the rule-making process. Taxpayers are not expected to incur any expense in the repeal of these rules.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Jaimie Lee, Tax Analyst  
Address: Tax Research and Analysis Section  
Arizona Department of Revenue  
1600 West Monroe  
Phoenix, Arizona 85007  
Telephone: (602) 542-4672  
Fax: (602) 542-4680

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Oral proceedings at which members of the public may appear and make comments regarding the rules or the economic, small business, and consumer impact statement will occur as follows:

Date: April 19, 1999  
Time: 1 p.m.  
Location: Department of Revenue Building  
1600 West Monroe, Large Conference Room, B1 Floor  
Phoenix, Arizona 85007  
Nature: Public hearing

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A person may submit written comments regarding the proposed rule by mailing the comments no later than 5 p.m., April 19, 1999, to the address listed in question #10.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
None.
12. Incorporations by reference and their location in the rules:  
None.
13. The full text of the rules follows:

**TITLE 15. REVENUE**

**CHAPTER 2. DEPARTMENT OF REVENUE**  
**INCOME AND WITHHOLDING TAX SECTION**

**ARTICLE 3. RETURNS**

**Section**

- R15-2-342. Returns by exempt organizations  
R15-2-347. Time for filing certain information returns

**ARTICLE 5. PAYMENT AND COLLECTION OF TAX**

- R15-2-534. Period of limitation for proposing deficiency assessments

**ARTICLE 7. JEOPARDY ASSESSMENTS;  
BANKRUPTCY; RECEIVERSHIP**

- R15-2-702. Demand for return and payment of tax where collection of tax in jeopardy  
R15-2-704. Finality of jeopardy assessment  
R15-2-705. Action on petition for jeopardy assessment; hearing with Department

**ARTICLE 8. INTEREST AND PENALTIES**

- R15-2-821. Penalty in case of failure to file return  
R15-2-822. Penalty in case of failure to file upon demand  
R15-2-823. Penalty for failure to furnish information

**ARTICLE 10. INDIVIDUALS**

- R15-2-1022. Subtractions and Additions from Arizona Gross Income

**ARTICLE 12. TAX EXEMPT ORGANIZATIONS**

- R15-2-1215. Denial of tax exempt status  
R15-2-1217. Disallowance of certain charitable or other deductions

**ARTICLE 3. RETURNS**

- R15-2-342. Returns by exempt organizations

Requirement of annual returns. Every organization exempt from tax under Section 43-1201 having gross income in excess of \$25,000 irrespective of whether it is chartered by, affiliated, or associated with any central, parent, or other organization except organizations specifically exempted from filing annual returns by Section 43-1242 shall file with the Department annually a return of information specifically stating the items of gross income, receipts, and disbursements, and other such information as may be prescribed by the Department in the instructions on the form or

issued by it therewith. Returns shall be on the basis of the established annual accounting period of the organization. When the organization does not have such established accounting period, such returns shall be on the basis of the calendar year. Every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the Department for the purpose of inquiring into its exempt status.

**R15-2-347. Time for filing certain information returns**

- A. Annual information returns are required to be filed for common trust funds (Section 43-341) and for every trust claiming a charitable deduction (Section 43-343). Such information returns must be filed on or before April 15 following the close of the calendar year or on or before the 15th day of the fourth month following the close of a fiscal year.
- B. Exempt organizations under Section 43-1201 are required to file an information return, unless specifically exempted from filing a return under the provisions of Section 43-1242. Such information returns must be filed on or before May 15 following the close of the calendar year or on or before the 15th day of the fifth month following the close of a fiscal year.
- C. Annual information returns for certain payments to taxpayers of:
1. \$300 or more (Section 43-344);
  2. patronage dividends of \$100 or more (Section 43-345) and
  3. income on securities (Section 43-346) are required to be filed on or before February 16 following the close of the calendar year.

**ARTICLE 5. PAYMENT AND COLLECTION OF TAX**

**R15-2-534. Period of limitation for proposing deficiency assessments**

- A. The statutory periods of A.R.S. § 42-113 are applicable to the mailing dates of the notices proposing to assess a deficiency. The statutory periods shall only be extended by written agreement made before the expiration of these statutory periods or any previously agreed upon extensions.
- B. If a notice proposing to assess a deficiency is mailed within the prescribed period of limitation, the demand for payment may occur at any time after the assessment becomes final.

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**ARTICLE 7. JEOPARDY ASSESSMENTS;  
BANKRUPTCY; RECEIVERSHIP**

**R15-2-702. Demand for return and payment of tax where collection of tax in jeopardy.**

If the Department believes that the collection of any tax for any period for which a return has not been filed will be jeopardized by delay, it may demand that the tax for such period be paid immediately regardless of whether or not the return for the period is due and regardless of whether or not the period covers a full taxable year of 12 months. Furthermore, in such an event, the Department is authorized to estimate the income of the taxpayer for such period on the basis of any available information and to assess the tax.

**R15-2-704. Finality of jeopardy assessment**

- A. On the filing of a petition for reassessment and a bond of the character described within ten days after the date of notice and demand for payment of the amount assessed, the collection of so much thereof as is covered by the bond or other security will be stayed. The taxpayer may at any time waive the stay of collection of the whole or any part of the amount covered by the bond or other security.
- B. If any part of the amount covered by the bond or other security is paid as a result of such waiver, or if any portion of the jeopardy assessment is abated by the Department, the bond or other security shall at the request of the taxpayer be proportionately reduced. If the Department determines that the amount assessed is greater than the correct amount of the tax, the bond or other security also will be proportionately reduced at the request of the taxpayer.

**R15-2-705. Action on petition for jeopardy assessment; hearing with Department**

- A. Any hearing and decision provided for by Section 43-705 shall be conducted in the manner set forth in R15-10-101 through R15-10-121.
- B. After the Department has rendered the decision, it will send notice and demand for the unpaid portion of the amount determined by it to be due, the collection of which has been stayed by the bond or other security. The Department will include in the notice and demand for the unpaid portion, interest at the rate of 12 percent per annum from the date of the jeopardy notice and demand to the date of the notice and demand referred to in this subsection. If the amount of the jeopardy assessment is in excess of the amount determined by the Department, the unpaid portion of such excess will be abated. If any part of the excess amount has been paid, it will be credited or refunded to the taxpayer as provided.

**ARTICLE 8. INTEREST AND PENALTIES**

**R15-2-821. Penalty in case of failure to file return**

- A. Penalty for failure to file
1. If a return is filed after the time prescribed for filing the return or after the time as extended by the Department, five percent of the remaining tax shall be added to the tax remaining due for each month or any fraction of a month elapsing between the due date of the return and the date on which it is filed, unless the failure to file the return within the prescribed time was due to reasonable cause. The cumulative penalty shall never exceed 25 percent of the tax.
  2. The penalty for late filing of a return applies to the tax remaining due as disclosed by the return and to any defi-

ciencies or additional amounts that are assessed. The notice and demand for the penalty shall be mailed at the same time as the notice and demand for the deficiency.

- B. If an extension of time for filing a return is granted, the return shall be considered due as of the end of the period for which the extension is granted and penalties shall be computed accordingly.
- C. If a taxpayer who files a late return wishes to request that the penalty be waived, the return shall be accompanied by:
1. a remittance of the full amount of tax shown on the return together with interest; and
  2. a signed statement under penalty of perjury setting forth all the facts alleged as a reasonable cause for failure to file the return on time. If the return is not accompanied by such a statement, the penalty, the tax and the accrued interest shall be paid at the time the return is filed.
- D. The late filing penalty is calculated only on the tax or additional tax that is remaining due.

**R15-2-822. Penalty in case of failure to file upon demand**

If a return has not been filed within the time prescribed, the Department may send the taxpayer a demand that the return be filed. If the return is not filed within the time specified in the demand, the taxable amount and resulting tax liability of the taxpayer may be estimated and the tax assessed on the basis of any available information. A penalty of 25 percent in addition to any other penalties assessed shall be added to the tax so assessed. If the return is filed within the time prescribed in the demand, it shall be accompanied by the tax, accrued interest, and either the penalties determined or a signed statement under penalty of perjury setting forth the facts alleged as a reasonable cause for failure to file the return on time.

**R15-2-823. Penalty for failure to furnish information**

The Department may request information from taxpayers in order to determine their tax liability. If any taxpayer fails to furnish the information which has been requested in writing by the Department within the time specified by the Department, a penalty of 25 percent of any additional tax assessed by the Department shall be imposed by the Department, unless the taxpayer establishes that such failure was due to reasonable cause.

**ARTICLE 10. INDIVIDUALS**

**R15-2-1022. Subtractions and Additions from Arizona Gross Income**

- A. Federal adjusted gross income, computed according to the Internal Revenue Code, is the starting point in calculating Arizona adjusted gross income. In order to arrive at Arizona adjusted gross income, additions or subtractions shall be made to Arizona gross income pursuant to A.R.S. §§ 43-1021 and 43-1022.
- B. See the following rules for treatment of the indicated provisions not described as part of the R15-2-1022 rules which are also applicable to subtractions:
1. R15-2-1021.01 Beneficiary's share of trust or estate income;
  2. R15-2-1021.05 Partnership income or loss;
  3. R15-2-1021.06 Income-producing property—different basis;
  4. R15-2-1021.07 Pollution control devices;
  5. R15-2-1021.08 Child care facilities; and,
  6. R15-2-1021.09 Individual net operating losses.

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**ARTICLE 12. TAX EXEMPT ORGANIZATIONS**

**R15-2-1215. Denial of tax exempt status**

~~Organizations described in Section 43-1215, paragraphs (1) through (5) will not be subject to the denial of tax exempt status under this Article.~~

**R15-2-1217. Disallowance of certain charitable or other deductions**

~~A. A gift or contribution which would otherwise be allowable as a charitable or other deduction shall not be allowed as a deduction if made to an organization which at the time the gift or contribution is made is not exempt under Section 43-1201 by reason of the provisions of Section 43-1211.~~

~~B. If an organization that receives a gift or contribution is not exempt under Section 43-1201 because it engaged in a prohibited transaction involving a part of the income or corpus of the organization with the purpose of diverting the income or corpus from the exempt purposes, and if the taxable year of the organization when the gift or contribution transaction occurred is the same as it was before the transaction occurred, then a deduction by the donor relative to the gift or contribution shall not be disallowed under subsection (A) of this Section unless the donor was a party to such prohibited transaction.~~